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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

MICHAEL HETHERINGTON,
Individually and on Behalf of the Class,

Plaintiff,

v.

OMAHA STEAKS, INC. and OMAHA
STEAKS INTERNATIONAL, INC.,

Defendants.

Case No. 3:13-cv-02152-SI

**DECLARATION OF KEITH S.
DUBANEVICH IN SUPPORT OF
PLAINTIFF'S MOTION FOR
APPROVAL OF ATTORNEYS' FEES**

I, Keith S. Dubanevich, declare under penalty of perjury that the following is true and correct:

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Page 1 – **DECLARATION OF KEITH S. DUBANEVICH IN SUPPORT OF PLAINTIFF'S
MOTION FOR APPROVAL OF ATTORNEYS' FEES**

1. I am a Shareholder with Stoll Stoll Berne Lokting & Shlachter, P.C. (“SSBLS”) This declaration is based on my personal knowledge and, if called to testify to the following facts, I could and would competently do so.

2. I am submitting this declaration in support of my firm’s application for an award of attorneys’ fees and expenses in connection with services rendered in the above-entitled action.

3. My firm is counsel of record for the Plaintiff and the Class Members.

4. My curriculum vitae is attached as Exhibit A.

I. INTRODUCTION

5. I graduated from Tulane University School of Law in 1983, *cum laude*. Following graduation, I practiced law at private law firms in Boston, Massachusetts; Houston, Texas; and Portland, Oregon. From January 2009 through September 2012, I served in a variety of positions at the Oregon Department of Justice, including Special Counsel, Chief of Staff, and Associate Attorney General. I joined Stoll Berne as a shareholder in September 2012.

6. I have served as local counsel in this action, and as co-Class Counsel with Keogh, Cox & Wilson, Ltd. and Bohrer Law Firm, LLC. In this capacity I have assisted in all aspects of this litigation, including through discovery, class certification briefing, mediation and claims administration. I attended one deposition, the class certification hearing, and consulted with co-Class Counsel on numerous occasions throughout this litigation including during the lengthy settlement negotiations.

7. Since joining Stoll Berne in 2012, my practice has focused primarily on prosecution of class actions, and the prosecution and defense of complex litigation matters. By way of example:

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- a. I was appointed lead class counsel in *A.F. v. Providence Health Plan*, Case no. 3:13-cv-00776-SI (D.Or.). This action was certified as an injunctive class action by this Court on December 24, 2013. The matter involves violations of ERISA and related Oregon laws.
- b. I am class counsel in *In re JPMorgan Chase & Co. Securities*, Case no. 1:12-cv-03852-GBD (S.D.N.Y.). This is a putative class case under the U.S. securities laws. I am working with other counsel for the lead plaintiffs and was involved in drafting the complaint. I was integrally involved in briefing the motion to dismiss that was denied and the motion for class certification that was granted. A motion for preliminary approval of a class-wide settlement of \$150 million is currently pending before the Court.
- c. I am class counsel in *Marchese v. Cablevision Systems Corp., et al*, Case no. 2:10-cv-02190-KM-MAH (D. N.J.). This is a putative class case under the U.S. antitrust laws. I was integrally involved with fact discovery, working with experts and the preparation of our motion for class certification. The case recently settled and is pending approval by the Court.
- d. I worked with other attorneys in our firm as class counsel in *In Re: Bank of New York Mellon Corporation Foreign Exchange Transactions Litigation*, Case no. 1:12-md-02335-LAK-JLC (S.D.N.Y.). This was a putative class case under the U.S. securities laws. I assisted with the drafting of the complaint and the legal memoranda that were filed on the motion to dismiss, and was integrally involved with the extensive discovery in the case. The case settled for \$180 million and the settlement was approved by the Court in 2015.

8. During my time at the Oregon Department of Justice, I supervised the state's securities cases including two which were brought as class actions:

- a. I supervised the state's role as a plaintiff, on behalf of the Oregon Public Employees Retirement Fund, in a class action case against Countrywide Financial Corp. *Maine State Ret. Sys. v. Countrywide Fin. Corp., et al.*, No. 2:10-cv-00302 MRP (MANx)(C.D.Cal.). See, <http://www.cohenmilstein.com/cases/224/countrywide-mortgage-backed-securities-mbs-litigation>.
- b. I supervised the state's case against Apollo Group Inc., the parent company of University of Phoenix. *In re Apollo Group, Inc. Securities Lit.* Nos. CV-10-1735-PHX-JAT (D. Ariz). See, <http://www.doj.state.or.us/releases/pages/2010/rel101810.aspx>

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9. During my private law practice, prior to joining the Oregon Department of Justice, I prosecuted a class case against an online bank, *Lindhe v. Netbank, Inc.*, No. 01-cv-00822 (W.D. Wash. 2002). I also defended multiple antitrust class actions. By way of example:

- a. I defended a multidistrict litigation class case in Puerto Rico, *In re Puerto Rican Cabotage Antitrust Litigation*, 269 F.R.D. 125 (D. Puerto Rico 2010) from the time the case was filed in multiple District Courts until the time I joined the Department of Justice in 2009. I was lead counsel for one of the defendants and was integrally involved in every phase of the case including legal research, motion drafting and court appearances.
- b. I defended a multidistrict litigation class case that was litigated in Connecticut and New York District Courts and in arbitration. *In re Parcel Tanker Shipping Services Antitrust Litigation*, 541 F.Supp.2d 487 (D. Conn. 2008). I was lead counsel for one of the defendants. The case came before the United States Supreme Court on the novel question of whether a party to an arbitration agreement could be compelled to participate in a class arbitration. *Stolt Nielsen, S.A. et. al v Animalfeeds International*, 130 S.Ct. 1758 (2010). *See also, JLM Industries, Inc. et. al. v Stolt-Nielsen, S.A., et. al*, 387 F.3d 163 (2nd Cir. 2004); *U.S. v Stolt-Nielsen, S.A.*, 524 F.Supp.2d 609 (E.D. Pa. 2007). I was integrally involved in every phase of the case, including in the trial courts, in arbitration and on appeal.

10. Aside from work on class actions, I have handled dozens, if not hundreds, of cases that I would characterize as “complex litigation.” I characterize much of my work as “complex,” among other reasons, because of the amounts at issue and the potential consequences flowing from the disputes, the procedural issues presented, the complexity of strategy decisions and the impact those decisions have on other issues, the scale of discovery involved, and the complexity of the legal issues presented. In the course of my thirty three-year career, I have appeared in over a dozen different courts, including at least seven different federal district courts, four different federal appellate courts and the U.S. Supreme Court. I have handled every conceivable complex litigation matter, including but not limited to, patent, antitrust, securities, constitutional, medical malpractice, and ERISA cases. Such cases have involved multiple districts and multiple parties.

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III. ATTORNEYS' FEES AND EXPENSES

A. SSBLs Attorneys' Fees

11. The information in this declaration regarding the firm's time and expenses is taken from time and expense printouts prepared and maintained by our firm in the ordinary course of business. I am the partner who oversaw and/or conducted the day-to-day activities in this litigation and reviewed these printouts (and backup documentation where necessary or appropriate). The purpose of these reviews was to confirm both the accuracy of the entries on the printouts as well as the necessity for and reasonableness of the time and expenses committed to the litigation. As a result of these reviews, reductions were made to both time and expenses either in the exercise of "billing judgment" or to conform to the firm's guidelines and policies regarding certain expenses such as charges for hotels, meals, and transportation. As a result of these reviews and adjustments, I believe that the time reflected in the firm's lodestar calculation and the expenses for which payment is sought are reasonable in amount and were necessary for the effective and efficient prosecution and resolution of the litigation. In addition, I believe that the expenses are all of a type that would normally be charged to a fee-paying client in the private legal marketplace.

12. In this regard, I am familiar with the prevailing rates for attorneys handling complex civil litigation in Portland, Oregon, as a result of my over thirty years of litigation practice. I am also familiar with the periodic Economic Surveys conducted by the Oregon State Bar ("OSB"), and which provide reports on average hourly rates charged in various parts of the state for attorneys with varying years of experience, including in Portland, Oregon.¹

¹ See <https://www.osbar.org/docs/resources/econsurveys/12economicsurvey.pdf>
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13. My standard hourly rate for clients who pay bills on a monthly basis and reimburse all costs, is \$465 per hour. That hourly rate does not account for the risks associated with litigating matters on a purely contingent basis. This rate is also consistent with the average hourly rates for comparably tenured attorneys in the Portland, Oregon area, as published by the OSB's surveys.

14. The total number of hours spent on this litigation by my firm is 137.8. The total lodestar amount for attorney time based on the firm's current rates in complex class action litigation, including a 1.25 multiplier, is \$75,435.32. The hourly rates shown below are the usual and customary rates set by the firm for each individual:

NAME	TYPE	HOURS	RATE	MULTIPLIER	LODESTAR
Keith S. Dubanevich	S	114.45	\$465	1.25	\$66,524.06
Tim DeJong	S	0.50	\$375	1.25	\$234.38
Jennifer Wagner	S	9.15	\$350	1.25	\$4,003.13
Josh Ross	S	0.50	\$350	1.25	\$218.75
Nadia Dahab	A	13.20	\$270	1.25	\$4,455.00
TOTAL		137.8			\$75,435.32

S = Shareholder

A = Associate

15. The number of hours that the attorneys of SSBLs have devoted to pursuing this litigation is appropriate and reasonable, considering, among other factors: (i) the scope and high-stakes nature of this large and complex litigation; (ii) the novelty and complexity of the claims asserted, including the federal TCPA; (iii) the hard-fought and lengthy nature of the settlement negotiations; (iv) the extensive discovery in which the parties engaged; (v) the risk involved; and (vi) the length of the litigation.

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B. SSBLS Paralegal Time

16. In addition to attorney time utilized to prosecute this action, SSBLS utilized paralegals to assist with the litigation. This time was necessary to litigate this case, and served as an efficient method for organizing and preparing this matter for the various hearings and discovery events.

17. The total number of paralegal hours spent on this litigation by my firm is 6.5. The total lodestar amount for paralegal time, based on the firm's current paralegal billable rate of \$200, and a multiplier of 1.25, is \$1,625.00.

18. The number of hours that the paralegals of SSBLS, have devoted to pursuing this litigation is appropriate and reasonable, considering, among other factors: (i) the scope and high-stakes nature of this large and complex litigation; (ii) the novelty and complexity of the claims asserted, including the federal TCPA; (iii) the hard-fought and lengthy nature of the settlement negotiations; (iv) the extensive discovery in which the parties engaged; (v) the risk involved; and (vi) the length of the litigation.

19. The paralegals who spent time on this case are employees of SSBLS and were paid for their time, independent of any recovery in this settlement.

C. Future Attorneys' Fees

20. Beyond the work already completed on this case and settlement, Class Counsel anticipate they will spend substantial time in the future on this case and settlement that is not included in the foregoing totals.

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21. In this regard, Class Counsel must prepare for and attend the upcoming Fairness Hearing. Preparation for this hearing will include conferences with the various retained experts who may testify at the hearing.

22. If the settlement is approved, Class Counsel must continue to work with the Claims Administrator to monitor and resolve any claims issues that arise. In this regard, the claims deadline is not until August 12, 2016.

23. After the expiration of the claims deadline, Class Counsel must obtain a final distribution order from the Court to allow the Claims Administrator to disburse benefits to the participating class members.

24. It is expected that Class Counsel will spend between 50-100 hours through the final resolution of this settlement, amounting to a lodestar value of approximately \$40,000.

D. Litigation Costs and Expenses

25. Included in the fee request is a request for an award of \$3,283.05 in expenses incurred by SSBLS in the course of this litigation. These expenses included costs for filing fees, Westlaw computer research, delivery costs, meals, hotel and transportation costs to the mediation in San Francisco, among other costs.

26. The expenses pertaining to this action are reflected in the books and records of this firm. These books and records are prepared from receipts, expense vouchers, check records, and other documents and are an accurate record of the expenses.

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IV. EXHIBITS

27. Attached hereto are true and correct copies of the following exhibits:

Exhibit A: Curriculum Vitae for Keith S. Dubanevich

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty of perjury.

DATED this 29th day of April, 2016.

/s/ Keith S. Dubanevich

Keith S. Dubanevich

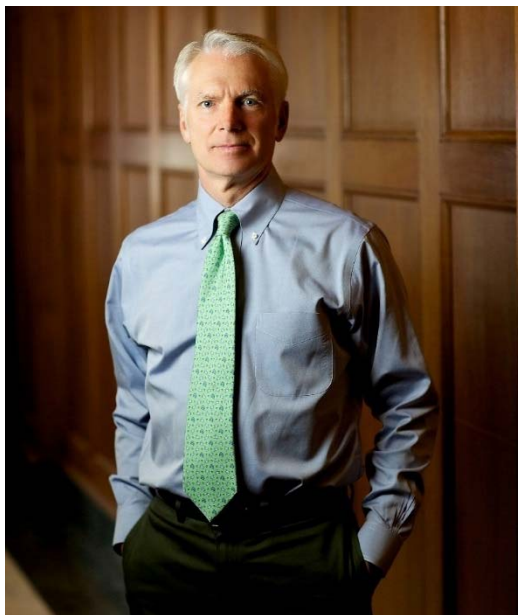
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Keith S. Dubanevich – Shareholder



Keith Dubanevich is a trial and appellate lawyer with over 30 years of experience in more than a dozen different jurisdictions around the country. He focuses his practice on complex dispute resolution and has extensive experience handling multi-state and international antitrust cases, consumer litigation and securities disputes. He was recently Associate Attorney General and Chief of Staff at the Oregon Department of Justice where he led the creation of a civil rights unit, managed securities litigation including multiple cases against financial services companies, and supervised antitrust investigations and prosecutions.

Keith has represented small and large companies including foreign companies in arbitration and litigation in state and federal courts. During his time with the Oregon Department of Justice, Keith was integrally involved with the adoption of legislation that expanded the Unlawful Trade Practices Act and legislation that imposed a mediation requirement prior to non-judicial foreclosures.

Representative Cases:

Antitrust:

- * Currently prosecuting a class action case in New Jersey challenging a cable company's unlawful tying of cable services with set top boxes. A motion for preliminary approval of a class-wide settlement is currently pending.
- * Defended Japanese company in multi-district and multi-state litigation alleging price-fixing and market allocation violations in the international parcel tanker shipping market. Lawsuits were filed in numerous state courts, and in foreign countries. No indictments were returned against Keith's client and the civil cases all settled after multiple appeals including an appeal from an order requiring arbitration of the direct purchaser disputes. See *JLM Industries, Inc. v. Stolt-Nielsen S.A.*, 387 F.3d 163 (2d Cir. 2004); *Stolt-Nielsen S.A. v. AnimalFeeds Internat'l Corp.*, 130 S. Ct. 1758 (2010).

Securities Fraud/Misrepresentation:

- * Co-counsel in two securities fraud cases against major financial institutions: *JPMorgan Chase* and *Bank of New York Mellon*. The *Bank of New York Mellon* case settled for \$180 million and a proposed class-wide settlement of \$150 million in the *JPMorgan Chase* case is currently pending before the Court.
- * Represented the Oregon State Treasurer and the Oregon College Savings Plan against Oppenheimer Funds for Oregon Securities Law violations causing severe and immediate losses to the college savings accounts invested through the Plan. Oregon was the first state to sue for recovery of the losses and the first state to settle and return funds to the Plan. The Plan received over \$20 million in settlement.

Complex Litigation:

- * Represented product supplier in an exclusive long-term contract dispute. Case settled for over \$20 million shortly before opening statements.
- * Representing proposed class of victims in a data-breach case involving health insurance beneficiaries.

ERISA:

- * Representing health insurance plan beneficiaries with autism seeking to compel health insurance company to provide medically necessary care. The Court certified a class of beneficiaries and granted injunctive relief finding a policy exclusion in violation of state and federal law.

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* Represented senior executive who sought severance benefits in arbitration after a merger of two public companies resulted in a substantial change in her responsibilities. The executive obtained a favorable award of severance benefits.

Real Estate/Breach of Contract:

* Represented equity investors in ownership disputes pending in bankruptcy court. The case spawned multiple trials and dissolution of the corporate entity.

* Represented real estate developer in separation dispute with former company. Case settled on terms favorable to all parties.

Health Care:

* Successfully defended national hospital chain at trial against exclusive dealing allegations.

* Obtained multiple summary judgment victories in defense of antitrust allegations arising from hospital medical staff privileges disputes.

Appellate:

* Argued *State of Oregon and Oregon Public Employees Retirement Fund vs. Marsh, Inc.* in Oregon Supreme Court in securities suit seeking to recover losses to the Fund due to fraud or material misstatements. Court ruled that reliance could be proven by fraud-on-the-market doctrine.

* Co-author of amicus briefs in the U.S. Supreme Court regarding the Affordable Care Act.

Professional Experience:

- Stoll Berne; shareholder, 2012-present
- Oregon Department of Justice; Associate Attorney General and Chief of Staff, March 2012-September 2012; Chief of Staff and Special Counsel, October 2009-March 2012; Special Counsel, January 2009-October 2009
- Garvey Schubert Barer, Portland, Oregon; shareholder, 1998-2008
- Fulbright & Jaworski L.L.P., Houston, Texas; partner, 1992-1998; associate, 1983-1988, 1989-1992
- Hale & Dorr, Boston, Massachusetts; associate, 1988-1989

Education:

- Tulane University School of Law, J.D., *cum laude*, 1983
 - Moot Court Board
 - Louisiana Trial Lawyers Award for Outstanding Advocacy
 - Order of Barristers
- Northeastern University, B.S., Public Administration, with high honors, 1980
- A.A. White Dispute Resolution Center, Mediation Certificate, 1997

Admitted to Practice:

- Texas State Bar, 1983
- Massachusetts State Bar, 1990 (inactive)
- Oregon State Bar, 1998
- United States Supreme Court
- United States Courts of Appeal for the Second, Fifth and Ninth Circuits
- United States District Courts for the District of Oregon, Western District of Wisconsin, Southern District of Texas, Eastern District of Texas, Northern District of Florida, Southern District of New York, and the District of Connecticut

Professional Activities:

- Oregon State Bar
 - Business Litigation Section Executive Committee, 2002-2009; Chair, 2008; Chair-elect, 2007; Treasurer, 2007; Secretary, 2006
- American Bar Association
 - Antitrust and Litigation Sections, Member
- Owen M. Panner American Inn of Court, Master, 1998-present

Community Activities:

- Hoyt Arboretum Friends, Board of Directors, 2012-present; President 2013-present